Supreme Court, U.S.
FILED
JAN 8 2001
CLERK

No. 99-1977

In the Supreme Court of the United States

DONALD SAUCIER, PETITIONER

v.

ELLIOTT M. KATZ AND IN DEFENSE OF ANIMALS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: JUNE 8, 2000
CERTIORARI GRANTED: NOVEMBER 13, 2000

TABLE OF CONTENTS

	Page
Docket Entries:	
United States Court of Appeals for the Ninth Circuit	1
United States District Court for the Northern District of California	5
Transcript of Deposition of Elliot Katz (June 2, 1997) (Excerpts)	18
Transcript of Deposition of Donald Saucier (May 13, 1997) (Excerpts)	31
Transcript of Deposition of Steven Parker (May 13, 1997) (Excerpts)	45
Transcript of Deposition of Corbin R. Lee (June 3, 1997) (Excerpts)	61

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 98-16298

ELLIOT M. KATZ; IN DEFENSE OF ANIMALS, PLAINTIFFS-APPELLEE

v.

UNITED STATES OF AMERICA; MAJOR CORBIN LEE; BRIAN O'NEILL; SERGEANT STEVEN PARKER; GENERAL GLYNN C. MALLORY, JR., DEFENDANTS AND PRIVATE DONALD SAUCIER, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DOCKET ENTRY
7/17/98	Docketed cause and entered appearances of counsel * * *.
	* * * * *
9/21/98	Order filed defendants' motion to dismiss appeal 98-16121 is granted. [3482802-1] in 98-16298. The brfing schedule for appeal 98-16298 is amended as follows: the opening brf is due 10/30/98; the answering brf is due 11/30/98; the optional rpy brf is due within 14 days after service of the answering brf.

DATE	DOCKET ENTRY
	(Procedurally Terminated After Other Judicial Action; Jurisdictional Defects. * * * Diarmuid F. O'SCANNLAIN; Ferdinand F. FERNANDEZ; A. W. TASHIMA, author) (98-16298) [98-16121, 98-16298] (jr) [98-16121 98-16298]
10/30/98	Filed original and 15 copies Appellant Donald Saucier opening brief (Informal: n) 24 pages and five excerpts of record in 1 vol.; served on 10/29/98 [98-16298] (hh) [98-16298]
11/25/98	14 day oral extension by phone of time to file Appellee's brief. [98-16298] appellees' brief due 12/14/98, ; the optional reply brief is due 14 days from service of the answering brief. (cg) [98-16298]
12/16/98	Filed original and 15 copies appellees Elliot M. Katz and Defense of Animal's brief; served on 12/14/98 [98-16298] (hh) [98-16298]
12/29/98	Filed original and 15 copies Donald Saucier reply brief, (Informal: n) 10 pages; served on 12/28/98 [98-16298] (hh) [98-16298]

* * * * *

DATE	DOCKET ENTRY
8/10/99	ARGUED AND SUBMITTED TO David R. THOMPSON, Susan P. GRABER, Earl H. Carroll [98-16298] (gb) [98-16298]
10/22/99	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. David R. THOMPSON, author; Susan P. GRABER; Earl H. Carroll.) FILED AND ENTERED JUDGMENT. [98-16298] (hh) [98-16298]
12/6/99	[3803603] Filed original and 50 copies Appellant Donald Saucier petition for rehearing with suggestion for rehearing en banc; 15 p.pages, served on 12/3/99 (PANEL AND ALL ACTIVE JUDGES) [98-16298] (hh) [98-16298]
1/10/00	Filed order (David R. THOMPSON, Susan P. GRABER, Earl H. Carroll,): . . . The petition for rehearing and the petition for rehearing en banc are DENIED. [98-16298] (hh) [98-16298]
1/19/00	MANDATE ISSUED [98-16298] (jjf) [98-16298]

DATE	DOCKET ENTRY
4/3/00	Received letter from the Supreme Court dated 3/30/00 re: application for an ext of time within which to file a petition for a writ of certiorari . . . extended the time to and including 5/9/00. (CASEFILES) [98-16298] (hh) [98-16298]
5/4/00	Received letter from the Supreme Court dated 5/1/00 re: application for an ext of time within which to file a petition for a writ of certiorari. . . . extended the time to and including 6/8/00. (CASEFILES) [98-16298] (hh) [98-16298]
6/12/00	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 99-1977 filed on 6/8/00. [98-16298] (hh) [98-16298]
7/6/00	RECORD RETURNED. (See control card for details.) (jay) [98-16298]
11/16/00	Received notice from Supreme Court, petition for certiorari GRANTED on 11/13/00. Supreme Court No. 99-1977 (hh) [98-16298]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND)

No. 94-CV-3466

ELLIOT M. KATZ;
IN DEFENSE OF ANIMALS, PLAINTIFFS,

v.

UNITED STATES OF AMERICA,
MAJOR CORBIN LEE, BRIAN O'NEILL,
SERGEANT STEVEN PARKER, PRIVATE DONALD
SAUCIER, GENERAL GLYNN C. MALLORY, JR.;
DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
9/29/94	1	COMPLAINT Summons(es) issued; Fee status pd entered on 9/29/94 in the amount of $ 120.00 (Receipt No. 111945) [3:94-cv-03466] (fw) [Entry date 09/29/94]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/22/95	42	AMENDED COMPLAINT [1-1] by Plaintiff Elliot M. Katz, Plaintiff In Defense of Animal terminating defendant William D. Swift; adding Steven Parker, Donald Saucier, Glynn C. Mallory JR. [4:94-cv-03466] (mh) [Entry date 03/23/95]
		* * * * *
10/25/95	79	SECOND AMENDED COMPLAINT [42-1] by Plaintiff Elliot M. Katz, Plaintiff In Defense of Animal [4:94-cv-03466] (mh) [Entry date 10/27/95]
		* * * * *
11/6/95	82	ANSWER by defendant USA, defendant Corbin Lee, defendant Brian O'Neill, defendant Steven Parker, defendant Donald Saucier, defendant Glynn C. Mallory Jr. to 2ND Amended Complaint [79-1] [4:94-cv-03466] (mh) [Entry date 11/07/95]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/2/96	91	Notice of motion and MOTION before Judge D. L. Jensen by Plaintiffs for partial summary judgment and request for declaratory relief; with Notice set for 5/8/96 at 10:00 [4:94-cv-03466] (kc) [Entry date 04/02/96]
4/2/96	92	MEMORANDUM by Plaintiff in support of motion for partial summary judgment and request for declaratory relief; [91-1] [4:94-cv-03466] (kc) [Entry date 04/02/96]
		* * * * *
4/19/96	94	OPPOSITION by defendants to motion for partial summary judgment and request for declaratory relief; [91-1] [4:94-cv-03466] (oh) [Entry date 04/19/96]

DATE	DOCKET NUMBER	PROCEEDINGS
4/24/96	95	REPLY MEMORANDUM by Plaintiff in support of the motion for declaratory relief and partial summary judgment [4:94-cv-03466] (mh) [Entry date 04/25/96]
4/24/96	96	DECLARATION by Kirk Boyd on behalf of Plaintiff in support of the reply memorandum [95-1] [4:94-cv-03466] (mh) [Entry date 04/25/96]
	* * * * *	
6/27/96	98	ORDER by Judge D. L. Jensen denying motion for partial summary judgment and request for declaratory relief [91-1], Plaintiffs' motion for declaratory relief is DENIED (Date Entered: 7/2/96) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 07/02/96]

DATE	DOCKET NUMBER	PROCEEDINGS
10/11/96	99	MOTION before Judge D. L. Jensen by defendant for summary judgment with Notice set for 11/20/96 at 10am [4:94-cv-03466] (mh) [Entry date 10/15/96]
11/6/96	100	AMENDED MOTION before Judge D. L. Jensen by defendant for partial summary judgment with Notice set for 1/22/97 at 10am [4:94-cv-03466] (mh) [Entry date 11/07/96]
1/2/97	101	MEMORANDUM by Plaintiff in opposition to the motion for summary judgment [4:94-cv-03466] (mh) [Entry date 01/03/97]
1/2/97	102	DECLARATION by J. Kirk Boyd on behalf of Plaintiff in opposition to the motion for summary judgment [4:94-cv-03466] (mh) [Entry date 01/03/97]

DATE	DOCKET NUMBER	PROCEEDINGS
1/8/97	103	REPLY MEMORANDUM by defendant to the motion for partial summary judgment [100-1] [4:94-cv-03466] (mh) [Entry date 01/09/97]
2/5/97	104	MINUTES: (C/R Carol Karen) Hearing held that the motion for partial summary judgment [100-1] is submitted [4:94-cv-03466] (mh) [Entry date 02/07/97]
2/24/97	105	ORDER by Judge D. L. Jensen granting motion for partial summary judgment [100-1] on First Amendment casuse of action on the basis of qualified immunity; DEFERS ruling on defendants summary judgment on the Fourth Amendment Cause of Action and the Court does not reach merits of defendants motion for summary judgment on the First Amendment cause of action. (Date Entered: 2/28/97) (cc: all counsel) [4:94-cv-03466] (oh) [Entry date 02/28/97]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
9/16/97	—	RECEIVED Video Tape submitted by Plaintiff [4:94-cv-03466] (mh) [Entry date 09/16/97]
9/16/97	—	RECEIVED Video Tape (For the hearing motion 2/15/95) submitted by Plaintiff [4:94-cv-03466] (mh) [Entry date 07/24/98]
10/3/97	108	MOTION by defendants for summary judgment with Notice set for 11/12/97 at 10am [4:94-cv-03466] (mh) [Entry date 10/03/97]
10/22/97	109	OPPOSITION by Plaintiff to the motion for partial summary judgment [4:94-cv-03466] (mh) [Entry date 10/23/97]
10/28/97	110	DECLARATION by R. Joseph Sher on behalf of defendants in support of the motion for summary judgment [108-1] [4:94-cv-03466] (mh) [Entry date 10/29/97]

DATE	DOCKET NUMBER	PROCEEDINGS
11/12/97	111	MINUTES: (C/R Rosita Flores) (Hearing Date: 11/12/97) that the motion for summary judgment [108-1] is submitted pending further briefing: plaintiff to supply brief by 12/10/97; defense response by 1/24/98 [4:94-cv-03466] (kk) [Entry date 11/18/97]
12/10/97	112	STIPULATION and ORDER by Judge D. L. Jensen: continuing Defendants' motion for summary judgment, to & including 1/9/98 (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 12/15/97]
1/13/98	113	STIPULATION and ORDER by Judge D. L. Jensen: continuing the filing dates for supplemental briefing re Defendants' motion for summary judgment, to & including 2/13/98; Defendants' brief shall be filed by 2/27/98 (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 01/14/98]

DATE	DOCKET NUMBER	PROCEEDINGS
1/13/98	114	DECLARATION by Kirk Boyd on behalf of Plaintiff in support of the opposition [109-1] [4:94-cv-03466] (mh) [Entry date 01/14/98]
2/13/98	115	SUPPLEMENT by Plaintiff re opposition memorandum [101-1] [4:94-cv-03466] (mh) [Entry date 02/17/98]
2/27/98	116	SUPPLEMENTAL REPLY MEMORANDUM by defendants in support of defendants' motion for summary judgment [4:94-cv-03466] (mh) [Entry date 03/02/98]
2/27/98	117	DECLARATION by R. Joseph Sher on behalf of defendants in support of the supplemental reply memorandum [116-1] [4:94-cv-03466] (mh) [Entry date 03/02/98]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/15/98	119	ORDER by Judge D. L. Jensen GRANTING IN PART & DENYING IN PART Defendant Saucier's motion for summary judgment & GRANTS Defendants Mallory & Lee's motion for summary judgment (Date Entered: 5/20/98) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 05/20/98]
5/15/98	120	JUDGMENT: by Judge D. L. Jensen Judgment is hereby entered in favor of Defendant, Major Corbin Lee & against Plaintiffs, Elliot M. Katz & In Defense of Animals (Date Entered: 5/20/98) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 05/20/98]
5/15/98	121	JUDGMENT: by Judge D. L. Jensen Judgment is hereby entered in favor of Defendant, General Glynn C. Mallory &

DATE	DOCKET NUMBER	PROCEEDINGS
		against Plaintiffs, Elliot M. Katz & In Defense of Animals (Date Entered: 5/20/98) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 05/20/98]
6/15/98	122	NOTICE OF APPEAL by Plaintiff Elliot M. Katz, Plaintiff In Defense of Animal from Dist. Court re order [105-1], decision order [119-1], judgment [120-2], judgment [121-2]; Appeal Fee status PAID [4:94-cv-03466] (mh) [Entry date 06/16/98] [Edit date 06/16/98]
		* * * * *
6/22/98	—	NOTIFICATION by Circuit Court of Appellate Docket Number #98-16121 for the Appeal filed on 6/15/98 [4:94-cv-03466] (mh) [Entry date 06/22/98]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
7/13/98	127	ORDER by Judge D. L. Jensen Judgment is hereby entered in favor of Major Corbin Lee & against Elliot M. Katz & In Defense of Animals, pursuant to FRCivP 54(b) (Date Entered: 7/15/98) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 07/15/98]
7/14/98	—	NOTICE OF APPEAL by defendant from Dist. Court decision order [119-2]; Fee status PAID [4:94-cv-03466] (scu) [Entry date 07/14/98]
		* * * * *
7/14/98	128	ORDER by Judge D. L. Jensen Judgment is hereby entered in favor of defendant General Glynn C. Mallory & against plaintiffs, Elliot M. Katz & In Defense of Animals, pursuant to FRCivP 54(c) (Date Entered: 7/16/98) (cc: all counsel) [4:94-cv-03466] (mh) [Entry date 07/16/98]

DATE	DOCKET NUMBER	PROCEEDINGS
7/22/98	—	NOTIFICATION by Circuit Court of Appellate Docket Number #98-16298 [4:94-cv-03466] (mh) [Entry date 07/22/98]
		* * * * *
9/22/98	131	COPY of USCA Order: granting Defendants' motion to dismiss appeal [4:94-cv-03466] (mh) [Entry date 09/22/98]
11/19/98	132	CERTIFIED COPY of USCA Mandate Order: dismissing the appeal [122-1] [4:94-cv-03466] (mh) [Entry date 11/19/98]
		* * * * *
1/20/00	137	CERTIFIED COPY of USCA Order: affirming the decision of the District Court [122-1] [4:94-cv-03466] (rl) [Entry date 01/21/00]
		* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 94-3466 DLJ

ELLIOT M. KATZ AND
IN DEFENSE OF ANIMALS, PLAINTIFFS,

vs.

THE UNITED STATES OF AMERICA,
MAJOR CORBIN LEE, SERGEANT
STEVEN PARKER, PRIVATE DONALD
SAUCIER, GENERAL GLYNN C. MALLORY, JR.;
BRIAN O'NEILL, AND DOES 1 THROUGH X,
INCLUSIVE, DEFENDANTS

DEPOSITION OF ELLIOT KATZ

June 2, 1997

* * * * *

[31]

Q. Did you walk from the parking lot to wherever the event was going to take place?

A. Yes.

[32]

Q. Was there set up any kind of seating area or other area for the public to see the events?

A. Yes.

Q. Was it a seating area?

A. Yes.

Q. Did you find a seat?

A. Yes.

Q. In the front row?

A. Eventually.

Q. Did it take some time to get a seat in the front row?

A. Yes.

Q. And was it your intention to do that as part of preparing for your public display of your banner?

A. I think that gave me more accessibility to be in the front row.

Q. Where was the banner?

A. I was holding it in my jacket.

Q. How were you dressed on that day?

A. I don't recall. I know I had a jacket, but I don't know whether I was wearing a sport jacket or a jacket with a zipper. I don't recall.

Q. And the banner was underneath the jacket?

A. Yes.

* * * * *

[33]

Q. How long after the events started did you begin to take out your banner?

A. I don't—I took it out, as I recall, while Vice President Gore was speaking, and I don't remember—I think—I'm pretty sure there was—there were other speakers that preceded him, but . . . .

Q. Did you have any difficulty, by the way, walking from the parking lot to the seating area?

* * * * *

[34]

A. Did I have any difficulty? No, I didn't have any difficulty.

Q. In the complaint in this action, it is alleged that you were wearing a foot brace of some kind at that time. Is that correct?

A. Yes.

Q. What kind of foot brace were you wearing?

A. I don't know how to describe it. It was—I had a fractured foot. And so, it was one of these braces that comes up to about here (indicating).

Q. Just below the knee?

A. Up to below the knee. It's a boot. You put your foot—your whole leg goes into it, and then it has straps, and you strap it on.

Q. Would that have gone outside the leg of your trousers if you were wearing long pants?

A. I believe it was inside of the trousers. The boot—you could see there's no shoe. It goes all the way down. But the upper part, I believe, was under my pants.

Q. And you were wearing a regular shoe on the other foot; is that right?

A. Yes.

* * * * *

[35]

Q. Do you recall how long a distance it was from the car to the seating area?

A. Probably 500 feet, maybe. Something like that.

* * * * *

Q. When you decided to take out your banner, what was the first thing you did?

A. I assume I took out the banner. I think I—this is going to be step-by-step. I believe I may have taken out the banner, and sort of maybe [36] held it on my lap closed, because it was folded.

Q. While you were still seated.

A. Yeah.

Q. Then what?

A. Then I stood up, opened the banner up, unfolded the banner, and walked to the barrier—barriers had been set up—metal barrier, and laid the banner so that the top of it would be on the circular area of the barrier that we set up, and then it would fall down and open up so it would just be hanging from the barrier.

Q. Was the barrier, as you recall it, sort of a bicycle rack kind of thing, or was it a snow fence kind of thing, or—

A. It was a bicycle rack kind of a thing.

MR. BOYD: How high? May I ask how high it was?

MR. SHER: Q. That was the next question. So, sure. Go ahead.

A. Probably—I don't know. Maybe three and a half, four feet, or something like that.

Q. Higher than waist height?

A. Probably that's about where it was.

* * * * *

[37]

Q. * * * How far was your seat from the barrier? Two steps, three steps, one step? Were your knees crushed against it?

A. I think it was probably about—I don't know. Maybe—it's a guess. I don't recall. Approximately from maybe here to this wall. Maybe about four feet. Something like that, I would think.

Q. Couple of strides?

A. Yeah. I think so.

Q. What's the next thing that happened after you got the banner over the fence?

A. Let's see. Somebody grabbed me from behind, and somebody else tore the banner away.

Q. Did either of those individuals say anything to you?

A. I don't believe so.

Q. The one who grabbed you from behind, did his arms go around your body?

A. I believe so.

Q. What happened next?

* * * Do you recall what either of these individuals looked like?

A. No. I was facing out and holding the thing [38] like this (demonstrating). Basically, I just held the banner in place so that Vice President Gore could see it, as well as give it a chance to unfold itself, because it never really, I don't believe, totally unfolded. Before it unfolded—this thing happened real quick. So, I think it unfolded maybe half down, or something like that. And then I just held it in place while I think they had their arms around me, or one of them had their arms around me.

Then when the—then I think each one of them took an arm, and they sort of started sort of picking me up

and kind of walking me out, kind of like very hurriedly, sort of like the bum's rush: Let's get this guy out of here.

Q. Did you try to prevent the banner from being taken away from the railing, taken off the railing?

A. It happened so quickly, I don't—I think I did, but it got pulled away real quick.

Q. And do I understand you to say you had one of these individuals on either side of you, I guess is the way to put that?

A. Yeah.

Q. Holding your arm?

[39]

A. I think—yeah. That's the way it ended up as I was being taken out. I think initially one grabbed me, and then they each took an arm and sort of carried me—half carried me—mostly carried me walking out.

Q. Did they say anything to you?

A. I don't believe so.

Q. Did you say anything to them?

A. I think I may have said something like "Careful," or something like that, but I don't recall exactly.

Q. Did you make any effort to slow them down; resist them in any way?

A. No. My feet were barely touching the ground.

Q. Did you make any effort to get your feet on the ground?

A. No. I couldn't. I was being held up in the air, sort of.

Q. Did there come a time when they put you down?

A. I don't know whether—again, my legs were sort of, at this point, together hitting the ground, but not enough to really be firmly planted. I never, I don't think—again, I was sort of being [40] carried out, in a way. I don't think I was ever put down I think it was all one thing, being kind of carried out.

Q. And where did they carry you to?

A. To the back—there was the seating area. So, they took me along in this—where—there was this little pathway along the seating area. And there was a vehicle, a van, a military police van, that they took me to.

* * * * *

Q. And when you got to the vehicle, what happened?

A. They pretty much threw me in. Just shoved me in.

Q. Did you attempt not to get put in?

A. No.

Q. Did you put your feet on the vehicle in any way?

A. I think I probably—I can't remember. I think I likely—my feet, when I was being put in, I think my feet touched the entrance to the truck. [41] I don't know if it was the bumper.

Then I was shoved.

Q. Do you recall whether it was a back entrance or a side entrance to the vehicle?

A. I'm pretty sure it was a back entrance.

Q. Were there seats in the vehicle?

A. I believe there were seats along the side. I think so.

Q. Did you sit down, then, in one of them?

A. Eventually.

Q. Eventually?

A. Yeah.

Q. When you were, as you say, shoved into the vehicle, did you fall down?

A. Yeah.

Q. Full length on the floor of the vehicle?

A. No. I managed to kind of prevent myself from—as it was happening, it was like flashing that I was—my head was going to smash down, or I was going to go full length into—with my head going into the end of the van, and I was able to stop the downward and the

forward motion by just catching myself so that I didn't smash myself.

Q. Do you recall what you caught yourself on?

A. It took a great deal of effort to prevent [42] myself from getting seriously hurt.

Q. Do you recall what you caught yourself on? That is, was it a seat back, a seat—

A. I think it was the floor.

Q. Then what happened? Did you seat yourself at that point?

A. I think I sat myself at that point.

Q. Did anybody speak to you?

A. I don't think so. I think they closed the door.

Q. So, you don't recall speaking to anybody, either, at that point.

A. No.

* * * * *

[43]

Q. What happened when you got the MP station?

A. They took us out and set us down on a [44] bench, I think, inside—I'm pretty sure I remember sitting on a bench inside one of the waiting rooms, and I don't really remember too much what transpired, whether they talked to us or whether they took

fingerprints. I don't think they even did anything. I can't remember.

Q. And there came a time, ultimately, when you left, obviously, since you're not still there.

A. Yeah. They put us—I think they put us back in the same van, and then took us to a parking lot over by the edge of the Presidio and let us out.

* * * * *

Q. What did you do after you got to the parking lot?

[45]

A. I don't recall that, either.

Q. Was it the parking lot where you had left your car?

A. No; no. I don't—it's vague. It's almost like it's after the fact. I mean, that whole thing was so traumatic, that whole thing of being, you know, carried, and then thrown in the van, shoved in, that it's sort of like—that's where my recollection almost ends. I was so close to getting so—almost severely hurt, that it's almost like I just kept thinking about that, going over it in my mind, that shove, and how I managed not to really get severely hurt, that I don't—sort of like everything else is almost after the fact. I don't have any recollection of what took place after that, whether somebody drove us back from the parking lot or—I don't know.

Q. Ultimately you returned to your car?

A. Apparently.

Q. Apparently. And drove home, I guess.

A. Yeah.

* * * * *

[67]

MR. SHER: Q. Calling your attention back to the first day, the 24th, the day that you were apprehended by the military police, at any time prior to your getting up and displaying your banner, did you talk to any of the military police personnel?

A. I don't recall. I don't think so, but I don't recall.

Q. Do you recall anybody talking to you about whether or not you planned to conduct any expressive activities prior to that event?

A. I don't recall. I believe some of my—one or two of my staff might have. And in terms of—because they were people who were wanting to be distributing flyers, or something, on the site, and they were asked to go off base. And so—which they did. So, they stood at the entrance of one of the gates.

So, I think the Army or the Park was dealing with somebody else, as opposed to me, that day.

Q. Were you aware of that before the events on the 24th?

[68]

A. Yeah. I believe so. That they didn't want them distributing brochures. Yeah.

Q. Did you seek any medical care after your apprehension?

A. No, I don't believe so.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 94-3466 DLJ

ELLIOT M. KATZ AND
IN DEFENSE OF ANIMALS, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA,
MAJOR CORBIN LEE, SERGEANT
STEVEN PARKER, PRIVATE DONALD
SAUCIER, GENERAL GLYNN C. MALLORY, JR.;
BRIAN O'NEILL, AND DOES 1 THROUGH X,
INCLUSIVE, DEFENDANTS

DEPOSITION OF DONALD SAUCIER

TUESDAY, MAY 13, 1997

* * * * *

[7]

Q. Now, as I understand it, out at the Presidio you were in the military police; is that right?

A. That's correct, sir.

* * * * *

[10]

Q. Okay. Well, what was your understanding as to the military base there, or at the Presidio, generally, were people allowed to come onto the base?

A. They were allowed to come on the base, but they weren't allowed to come on the base and protest, make us look like fools in front of high-ranking people.

Q. And why do you say they weren't allowed to do that?

A. Because it makes the army look bad. And myself, personally, I don't feel it's right either.

Q. And why don't you feel that it's right?

A. Like I said, I guess it just makes us look bad if we let people come on the post and let them protest and do what they want, sir.

[11]

Q. So do you recall a person being arrested at the day of the public event at the Presidio when Vice President Gore and others were there?

A. Do I recall? Yes, sir.

Q. Was that person being arrested because they were engaged in this First Amendment activity that they shouldn't be doing?

A. As regards to passing out leaflets, no. [B]ut what he did at, you know, the end of the Vice President's speech was wrong—unauthorized. You

know, I was given an order not to let any person, not just that person, but any person do that.

Q. Okay. What did he do?

A. He got up and started—towards the end of the Vice President's speech, he got up and started to, you know, drawing attention to himself and waving a banner.

Q. Okay. What did the banner say on it? Do you know?

A. I can't recall exactly what it had on it, sir, but it had something to do with animal rights.

Q. It was your understanding that that activity was prohibited?

A. That's correct, sir.

Q. Is that why you helped take him into custody?

[12]

A. Yes, sir. Just following my orders, sir.

* * * * *

Q. Now, at the time that you approached Dr. Katz, did he have the banner already out and he was holding it?

A. Yes, sir.

Q. Did you say anything to him?

A. I said nothing, sir.

Q. Did you hear Sergeant Parker say anything to him?

A. No, I didn't, sir.

Q. Did you approach Dr. Katz at the same time that Sergeant Parker did?

A. About the same time, sir.

[13]

Q. So when Sergeant Parker approached, Dr. Katz's banner was already out?

A. Yes, sir.

Q. And did you hear Sergeant Parker say anything to Dr. Katz?

A. Not that I recall, sir.

Q. And do you recall whether are not Dr. Katz said anything?

A. He said some stuff, sir, that I can't recall exactly what he was saying. You know, pretty much in a fuzz.

Q. Did he say anything regarding his First Amendment right to convey his message?

A. I can't remember, sir.

Q. Okay. But was he talking about his right to communicate, just generally?

A. Like I said, sir, I can't exactly remember what he was saying.

Q. So do you recall that you and Sergeant Parker took him into custody?

A. Yes, sir.

Q. Did you take the banner away from him?

A. Yes, sir.

Q. Who took the banner away from him?

A. It wasn't me. It had to have been Sergeant Parker. Sergeant Parker or one of the other [14] patrolmen that were on that day.

* * * * *

Q. [W]hen you took Dr. Katz into custody, did you physically escort him away from where he was?

A. Yes, sir.

Q. Did you take a look at him as you were escorting him?

A. Did I take a look at him, sir?

Q. Yeah.

A. I'm sure I probably glanced at him, sir.

Q. Did you see that he was an elderly man?

A. Oh, I noticed him before we even—because he was pointed out as one of the potential, you know, activists. So we pretty much had a heads-up on him, sir.

Q. Who pointed him out?

A. When he first arrived, Sergeant Parker let me know exactly who this person was, and there was a couple of people with him.

[15]

Q. And what did Parker say about that?

A. He didn't really say much. "That's the person we need to keep an eye on," basically.

Q. And did he say why?

A. Because it was put out that he might be—by Major Lee—that he might be a possible activist at the function because he would be seeking attention because it would be televised.

Q. I see. And it was understood that he should not be allowed to raise attention; is that right?

A. That's correct, sir.

Q. So then, once you escorted Dr. Katz away from where he was, do you recall taking him to a military vehicle?

A. Yes, sir.

Q. And where was that vehicle?

A. That was located in the rear of the seating area, sir.

Q. What was the purpose of that vehicle?

A. That vehicle was for anybody—anyone at all. It didn't necessarily have to be Dr. Katz. Anybody that became unruly and decided to act out.

Q. So it was there—in addition to keeping an eye on people, you had a vehicle there in case you needed to take them away for violating rules; is that [16] it?

A. That's correct, sir.

Q. So you knew where to take Dr. Katz?

A. I wasn't the driver of the vehicle, sir.

Q. Right.

A. I was just escorting that person to the vehicle.

Q. Right. But you and Sergeant Parker already knew where you going to take him once you got him in custody?

A. Right, sir.

Q. You were taking him to that vehicle?

A. Right, sir.

Q. Because it was understood ahead of time that if you did take Katz or one of these other activists into custody, you take them to the vehicle?

A. That's correct, sir.

Q. So then you took him to the vehicle. Did he resist you?

A. Yes, he did, sir.

Q. Did he try to hit you?

A. Negative, sir. He tried to keep himself anchored at the front of the seating area.

Q. Okay. He said he wanted to stay?

A. I don't know if he said he wanted to stay, but he definitely wanted to stay.

[17]

Q. Then after you—but you removed him from that seating area?

A. Yes, sir.

Q. Then you escorted him up to the van?

A. That's correct, sir.

Q. When you were escorting him, was he walking on his own?

A. I wasn't fully carrying him, you know, because I only had him by his left arm.

Q. So he was partly walking on his own?

A. That's right, sir.

Q. Did you see that he had a splint on his foot?

A. I don't remember, sir.

Q. Did you look for that?

A. Did I look for it, sir?

Q. Yeah.

A. I can't remember if I did or not.

Q. Did anyone pat him down?

A. Before putting him in the vehicle, sir?

Q. Yeah.

A. No, sir. He was kind of like unstable. He didn't really want to go into the van at all. So he didn't even want to be taken to the van, so—

Q. And did you have any conversation with him before you got to the van?

[18]

A. No, sir.

Q. And then once you got to the van, did you put him into the van?

A. Did I put him in personally? I assisted putting him in the van.

Q. Okay. And you were assisting Sergeant Parker?

A. Yes, sir.

Q. Is it fair to say that you both put him into the van together?

A. Yes, sir.

Q. And did you push him as you put him into the van?

A. When we first brought him back to the van, he resisted getting into the van by sticking his legs up on

the bumper and pushing away. So we had to use our heads putting him in the back of the vehicle.

Q. So are you saying that there was a period of time when you were stopped behind the back of the van and he was refusing to get into it?

A. Yes, sir.

Q. And did you talk to him about why you were putting him into the van?

A. No, sir.

Q. Did you talk to Sergeant Parker about whether or not he should be put into the van before [19] you put him in the van?

A. Negative, sir.

Q. Did Sergeant Parker push him into the van?

A. Did he push him in the van, sir?

Q. Right.

A. He assisted him into the van, sir. He didn't push him into the van, like, you know, like out of anger.

Q. So you would say that the two of you just assisted Dr. Katz, is that it?

A. That's correct, sir.

Q. And you think that assistance was the appropriate amount of force that was needed?

A. Yes, sir.

Q. Do you think Dr. Katz was a physical threat to you?

A. Any person can be a physical threat, sir.

Q. How tall are you, private Saucier?

A. I'm 6' 3", sir.

* * * * *

[20]

Q. So at the time of the arrest, what was your understanding about what would happen with [21] Dr. Katz once he was placed in the van?

A. He was going to be taken back to the station and be processed just like any other person would, sir.

Q. Processed for committing a crime?

A. Yes, sir.

Q. And what crime would that be?

A. That would be, you know, disobeying post regulations, sir, by not allowed to, you know, have any type of protesting on post of any type, sir.

Q. Does that depend on the circumstance that there are dignitaries present?

A. No, sir.

Q. It's always the same rule?

A. Yes, sir.

* * * * *

[22]

Q. Do you know what happened with the van [23] after Dr. Katz was put into it?

A. No, sir. I returned right to my position.

* * * * *

[24]

Q. And you feel that you used the minimum required with Dr. Katz?

A. Definitely.

Q. No question?

A. No questions.

Q. Have you watched the videotape that was sent to you?

A. Yes, I did, sir.

Q. Did you look at it closely?

A. Yes, sir.

Q. Are you the person that appears on the left-hand side of the video when Dr. Katz is being put in the van?

A. Yes, sir.

Q. Do you wear glasses, Specialist?

A. Not anymore. I wear contacts now, but I did then.

[25]

Q. So you were wearing glasses that day?

A. Yes, sir.

Q. Do you recognize yourself in that video?

A. Yes, sir.

Q. Do you recognize Dr. Katz?

A. Yes, sir.

Q. That's Dr. Katz that was being put into the van by the two of you, right?

A. Yes, sir.

* * * * *

Q. Do you recall there being a meeting to prepare for the public event that would be attended [26] by Gore, Feinstein and the others?

A. Yes, sir. * * * [W]e had the people that were going to be on duty working the details. * * * Major Lee gave us, you know, our operations orders, knew exactly what we were supposed to do.

Q. Did he discuss with you what you were supposed to do with respect to First Amendment activity.

A. In regards to anybody, you know, protesting or —yes.

* * * * *

Q. Right. And what did he say?

A. He told us exactly how to handle the situation. We didn't want to draw that much attention if we didn't have to. We just wanted to, you know, diffuse the situation if it arises.

Q. Get him into the van as quickly as possible then?

[27]

A. Right.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 94-3466 DLJ

ELLIOT M. KATZ AND
IN DEFENSE OF ANIMALS, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA,
MAJOR CORBIN LEE, SERGEANT
STEVEN PARKER, PRIVATE DONALD
SAUCIER, GENERAL GLYNN C. MALLORY, JR.;
BRIAN O'NEILL, AND DOES 1 THROUGH X,
INCLUSIVE, DEFENDANTS

DEPOSITION OF STEVEN PARKER

TUESDAY, MAY 13, 1997

* * * * *

[23]

Q. * * * What was your understanding, Sergeant, of the First Amendment right of citizens in San Francisco to engage in activities such as leafleting at the Presidio?

A. And was is leafleting?

Q. Like passing out leaflets regarding political issues.

A. My understanding is that while on a military installation, people are not entitled to freedom of speech, a First Amendment right.

Q. And does that understanding change if the base has been opened up for a big public event where, say, Vice President Gore and Diane Feinstein and other people are present?

A. No, not to my knowledge.

* * * * *

[31]

Q. Well, was it your understanding at the time of the public event that if people engaged in First Amendment activity that they were to be arrested?

A. Yes.

Q. And was that based upon the instructions given to you by your superiors?

A. As in instructions given, I don't remember back then what they said and what they didn't say.

Q. But I assume that your understanding that people should be arrested was based upon the orders that you had been given from your superiors?

A. Yes, sir.

Q. Now, what order, specifically, can you recall that led you to believe that?

A. During the presentation, if being on a military installation, the personnel there were not given an

opportunity for free speech because of them being on a military installation.

* * * * *

[37]

Q. And did it look to you to be—go ahead and describe for me the size of crowd, would you?

A. Large, sir. I mean, I couldn't put a number figure on it. I don't know. I don't have a clue, sir.

Q. And at the time of the event, do you recall at some point that you made an arrest?

A. I apprehended someone, sir.

Q. Can you tell me what caused you to apprehend somebody?

A. An individual running towards the barricade.

Q. Okay. And how fast was he running?

A. I don't know. I turned around—I don't know how fast he was running, sir.

Q. And can you tell me what you did?

A. As soon as I saw an individual get up and [38] go towards the barricade, I went right behind him. And he reached into his jacket, and I didn't know what it was, so I took my arms and put them around the individual.

Q. Well, did you see him take out a banner?

A. No, sir.

Q. Did you take a banner away from him at some point?

A. I did not take a banner. Not that I remember, sir.

Q. Was there anyone else with you at that time that you approached him?

A. I don't remember, sir.

Q. Well, do you recall—what was your specific duty that day at the public event, Sergeant?

A. I was in a seating area just ensuring that everyone had a good time, sir.

Q. Okay. And where there other people that were working with you that day in the seating area?

A. Yes, sir.

Q. Who was working with you in the seating area?

A. The people I can remember was a Saucier and Barbary, if those names are correct. I don't know if they are pronounced correct. Those are the two that I remember.

* * * * *

[42]

Q. Let me be more specific, Sergeant. You said that you approached someone who you saw moving, right?

A. Yes, sir.

Q. When you approached him, did you see that he was an elderly gentleman?

A. No, sir.

Q. Did you look at him?

A. No, sir.

Q. Did you talk to him?

A. At what time, sir?

Q. When you first approached him, did you say anything to him?

A. I don't remember, sir.

Q. Do you think that you said anything to him?

A. I don't remember, sir.

Q. Well, did you immediately take him into custody?

A. What I remember doing is trying to get his hands off the bar.

Q. Okay. Tell me what happened, please.

A. As I approached him, like I said, he was reaching into his jacket. I don't know what he was [43] grabbing for. I put my arms around him, and he put both his arms onto the barricade. And I was trying to pull him up away from the barricade, and he wasn't letting go.

And I don't know, I don't remember if any conversation took place or not.

Q. Well, based on your training, if you are going to take someone into custody, do you need to talk to them first in a situation such as that?

A. Under the circumstances that was going on at the Presidio, the people speaking there, I would say that the safety of the Vice President and the personnel there were—was my job to ensure that if this individual was trying to do something, pull a gun out or anything like that, I was there to ensure that that did not happen. And in speaking to him at that particular time, I do not remember.

Q. Well, did you see a banner in his hands when you approached him?

MR. SHER: Go ahead, Sergeant.

THE WITNESS: No, sir.

MR. BOYD: Q. Do you recall whether or not, after you reached him, if you saw a banner at any time?

A. No, sir.

Q. And had he started to unfurl a banner, would you have considered that to be First Amendment [44] activity?

A. At that time, with him running to or rushing to the barricade, I did not know what he was doing. To speculate and see that coming out, I don't know what my reaction would have been at that time.

Q. Did anyone go with you when you approached him?

* * * * *

A. I think that I arrived there first. And then another—I think it was PFC Saucier helped get him off the barricades.

* * * * *

[46]

Q. Did you give Dr. Katz any kind of a warning that he had to stop what he was doing?

A. Did I give him any type of warning? Meaning once he was on the barricade and I was behind him, there wasn't time. Is that what you mean, sir?

Q. At any time, did you give him any warning that he needed to stop what he was doing?

A. Not that I remember, sir, no.

Q. Did you pat him down to feel if he had any weapons?

A. I don't remember, sir.

Q. You said that you grabbed him; is that right?

A. I put my arms around the gentlemen, sir.

Q. Okay. Can you describe how you did that?

A. Like I said, he was in front of the barricade reaching inside his jacket. I took both my arms and put them around him. And what I assumed happened next is he took his hands and put them onto the barricade. And I was trying to pull him off the barricade. And that's when Saucier approached to try to help me too.

Q. Okay. What happened next?

A. We both got him off the barricade, and we escorted him back—we escorted him back approximately 50 yards at that time.

[47]

Q. Did he try to hit you?

A. I don't remember, sir.

Q. Do you recall him making any blow against either you or Private Saucier?

A. I remember him not coming with us, as in a sense that he—you think you have someone and they would just walk along with you. I don't remember that I remember me actually taking him back against his will.

Q. Do you recall looking at his foot to see if he had crutches?

A. No, sir.

Q. Do you recall seeing whether or not he had a cast on his foot?

A. No, sir.

Q. Do you recall seeing whether he had a splint on his foot?

A. No, sir.

Q. Did Dr. Katz overpower you at any time?

A. No, sir.

Q. And at any time did you think he was physically a danger to you?

A. I'd say as I went up to the barricade and he was there and I put my arms around him and he did not come, he clenched onto the bars, at that time he could have been a danger to a lot of different people.

[48]

Q. But once you had a hold of him, was he of any physical danger to you?

A. I don't know, sir.

Q. Well, did you look?

A. He could have gotten loose and possibly have a weapon. He could have been a danger to me.

Q. Did you feel any object that made you feel he had a weapon?

A. I didn't search him or anything. I was basically just doing my job to get him back and to the area where we were putting him at. And at which time—it went so fast. I just had my arms around him trying to get him back there. I did not know what he had.

* * * * *

MR. BOYD: Q. Well, was one of the things you [49] were doing there watching to make sure that nobody engaged in First Amendment activities?

A. I was there to ensure that everybody, you know, just came and sat down, had a good time, enjoyed the

Vice President speaking, anyone else that was going to speak and enjoy the day.

Q. As long as they didn't give any handbills or anything like that, right?

A. Well, it was a ceremony for the park, for the Presidio to be a park. So I would assume that people came there to enjoy the day and just enjoy people speaking there, get an opportunity to see the Vice President.

Q. And that was your understanding of the topics of the day were regarding this transition from a military base to a park?

A. Yes, sir.

* * * * *

[50]

Q. So when did you actually—strike that. Let me ask it a little cleaner here. Sergeant, did you physically carry Dr. Katz away from the seating area?

A. Physically carry?

Q. Yeah.

A. What did you mean by that?

Q. I mean did you and Private Saucier lift Dr. Katz off the ground in order to carry him away from the seating area?

A. What I remember is, like I said, him rushing to the barricade, putting my arms around him and trying

to get him to let go of the barricade. And it took another soldier to help me. And then taking him back to the area. As in picking him up and carrying him, I don't remember.

Q. Well, when you we were escorting him back to the area, was he walking?

A. I don't remember, sir.

[51]

Q. Do you recall if there was anyone else besides Private Saucier that was helping to escort Dr. Katz away from the seating area?

A. Not that I remember, sir.

Q. And when you escorted him away from the seating area, where did you take Dr. Katz?

A. I took him to a vehicle approximately 20 feet behind the seating area.

* * * * *

Q. Well, did you put Dr. Katz into that vehicle?

A. Yes, sir.

Q. Okay, did anyone help you to put Dr. Katz into that vehicle?

A. Saucier helped me.

* * * * *

[52]

Q. Okay. And does Saucier wear glasses?

A. Yes, he does.

* * * * *

[54]

Q. Did you receive any training at any time about how much force you should use when you take someone into custody?

A. Not that I can remember, sir.

Q. Do you recall ever receiving any training at the Presidio as to the amount of force that is [55] appropriate when you take someone into custody?

A. Yes, sir.

Q. What training did you receive?

A. The use of force—use minimal force to take care of the situation.

Q. And did you feel you used minimum force necessary with Dr. Katz when you put him in the van?

A. Yes.

Q. Do you feel that you complied with the training and policy of the Presidio military police when you put him into the van?

A. Yes, sir.

Q. Did anyone from the—any of your superiors at the Presidio ever tell you that you used an excessive amount of force when you put Dr. Katz into van?

A. No, sir.

Q. Have you ever received any discipline for using excessive force at any time in the military?

A. No, sir.

Q. Did you ever receive any discipline for the way you handled taking Dr. Katz into custody that day?

A. No, sir.

* * * * *

[57]

Q. Did you view a videotape of the placement of Dr. Katz into the van, Sergeant Parker?

A. Yes, sir.

Q. Did you look at that videotape closely?

A. Yes, sir.

Q. And do you recognize yourself in the videotape?

A. Yes, sir.

Q. And do you recognize Private Saucier in [58] the videotape?

A. Yes, sir.

Q. And you the gentlemen that was to the right-hand side when the two of you were putting Dr. Katz into the van?

A. Yes, sir.

Q. Do you recall pushing Dr. Katz as you put him into the van?

A. No, sir.

Q. Do you recall Private Saucier pushing Dr. Katz as he was put into the van?

A. No, sir.

Q. Do you know what happened to the van after Dr. Katz was put into it?

A. No, sir.

Q. What was your understanding of what was to happen with Dr. Katz?

A. My understanding was that he was going to be taken down to the MP station. And from there the personnel down there would do what they were going to do.

* * * * *

[59]

Q. And you took him into custody without telling him that he had committed any crime, is that right?

A. I took him into custody or I got him out [60] of the area due to the fact of what he did, being rushed the

barricade and trying to get something, pull something out of his jacket. Not knowing what that was—I did what I had to do. And at that time—

Q. But you never asked him what he was doing before putting him in the van, did you?

A. There was no time to do that, sir.

* * * * *

[62]

MR.BOYD: Q. But you never talked to Dr. Katz, did you?

A. There wasn't an opportunity to talk to Dr. Katz.

* * * * *

Q. How tall are you, Sergeant?

A. I'm about 6' 2".

Q. How much to you weigh?

A. 215 pounds.

Q Do you work out with weights?

A. Yes, sir.

Q. How frequently?

A. Lately, not much, sir.

Q. What do you bench, Sergeant, about 310?

A. No, sir. I would say maybe like 260.

Q. How about when you were out at the Presidio, did you bench about 260 at that time, too?

A. I don't remember, sir. I think I was in better shape at the Presidio, sir.

* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 94 3466 DLJ

ELLIOT M. KATZ AND
IN DEFENSE OF ANIMALS, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA,
MAJOR CORBIN LEE, SERGEANT
STEVEN PARKER, PRIVATE DONALD
SAUCIER, GENERAL GLYNN C. MALLORY, JR.;
BRIAN O'NEILL, AND DOES 1 THROUGH X,
INCLUSIVE, DEFENDANTS

DEPOSITION OF CORBIN R. LEE

JUNE 3, 1997

* * * * *

[18]

Q. * * * In either one of those [courses], did you have any discussions about how to handle First Amendment activities on a military base?

A. There was very limited discussions on First Amendment activities on military installations, because on military installations, with federal exclusive jurisdiction, there is no political [19] activities allowed.

Q. Can that depend on whether or not the base is opened up to the public for particular events?

A. Military installations are open up during the year for numerous type of events in which the public is not only allowed on but it is open to the public, but it is for special events such as ceremonies that are conducted, graduations, and Fourth of July celebrations, national celebrations.

They're not politically—it's not politically involved. It's not military—and it's extremely important, and all officers are trained in fact, that the military must remain neutral in a democratic society. And so regardless of what our personal political feelings are, it's not to be vented in public forums.

* * * * *

[20]

Q. So is it your understanding, then, that under no circumstances can the public engage in First Amendment activities on a military base regardless of the type of the event that's being held there?

A. It is my understanding, on a military installation, which is federally exclusive jurisdiction, that it is not used and the grounds of the military installation is not used for political purposes.

* * * * *

[24]

Q. * * * So isn't it true that you gave [Saucier] those orders, that they were to arrest people if people were engaged in First Amendment activities such as leafleting?

A. No, I don't remember telling him or anyone else that they are to arrest people.

The instructions that I remember, which was coordinated with United States Army JAG personnel, Sixth United States Army, was that protest, be it of a political nature, is not allowed on military installations, which is federally exclusive jurisdiction.

[25]

There was a fact sheet that was drafted up by Army JAG explaining in detail to anyone who wished to engage in protest activities on a military installation that it was not allowed and why it was not allowed.

As I recall, there was no intelligence information during the time leading up to these events or at the event that there was any group that wished to come on the military installation and protest anything.

* * * * *

However, during a briefing in preparation for deployment, it was probably covered, if not by myself, one of my noncommission officers in charge of the event with me, discussing, in the event if there is a protest, these written fact sheets would be given to the individuals who wanted to engage in such activities to explain to them that it is not allowed and why it is not allowed.

* * * * *

[31]

Q. Can you tell me how you have this understanding that Dr. Katz was spoken with before the events on the videotape?

A. My understanding, when this particular group wanted to come on to the Presidio, that a Staff Sergeant Reed, one of my noncommission officers in charge, alerted me to the fact that they were at the entrance to the Presidio wantin' to come on and possibly engage in protest activities for some type of animal rights organization.

* * * * *

I directed Staff Sergeant Reed, through another noncommission officer of mine, to report back to the Provost Marshal office and to obtain fact sheets, which clearly explain the nature of a federal [32] installation, exclusive federal jurisdiction, and that protest activities are not allowed because it's politically neutral.

He reported back to the Provost Marshal office, obtained the materials, and reported back to the Presidio gate in which this animal rights organization was at, and handed out fliers.

I do not know specifically if he talked to Dr. Katz. All I know is that he talked to the entire group as a whole and fliers were handed out to each group.

My understanding is that a leader of the group talked with the noncommission officer in charge, Staff Sergeant Reed, and agreed that they just wanted to come on to the installation and engage in the activities and

the ceremony that was being presented, to listen to Vice President Gore speak and see the facilities.

They stated, according to Staff Sergeant Reed, they understood the parameters involved with political protest on a federal military installation; they had [33] received the written documentation, and they understood that; they understood that banners were not allowed because of the nature of the event and the Vice President speaking and it was politically neutral, and they requested to come on.

And I did not think this was a problem. I did not think there was a problem with the group. From my monitoring the radio, it sounded like it was a very minor situation, and we more than happily welcomed the group on with the rest of the general public to come and attend the events.

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[43]

Q. So what conversation do you recall there being with these people that were involved at the time that Dr. Katz was taken into custody and escorted to the van?

A. I recall—and I believe it was Sergeant First Class Tony Bordigan who was reporting this to the command post—that, once again, members of—once again, individuals—at this time I don't even think that it was understood that it was an animal rights group or what the group was. It was a group that believed in animal rights, I guess—and that, once again, they had

violated the instructions of the military police, and I believe this was the fourth or fifth time.

My understanding was that although they were giving them fliers at the front gate that explained it to them and they agreed to it, that when they came on to the installation and they were in place where they were going to witness Vice President [44] Gore's speech, that at one point they came out with a banner in which they were asked to please put it away because it wasn't allowed, and they did that.

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I believe there was a third attempt in which a banner was attempted to be pulled out, and an MP, going really beyond what he should have, just allowed them to—just reminded them, "This is not allowed," and they—"Okay, okay," agreed to it, whoever these individuals were.

And I believe the last attempt that led up to the escorting of Dr. Katz off the premises was when they [45] unfolded the banner and the two MP's walked up to him and took the banner down from either side and asked him to please follow them, and from my recollection is that one MP was on each side of the individual and escorting him by holding his elbows.

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[48]

Q. Let me ask it this way: They're supposed to diffuse the situation, [49] right, if somebody did something like take out a banner; is that correct?

A. They were supposed to diffuse the situation in the way that I've described to you already.

Q. And that included removing that person as quickly as possible?

A. If it came down to that, it would include asking the individual to leave the installation.

Q. And removing them quickly?

A. In this particular instance, yes.

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